

**MINUTES FOR THE COURT OF APPEAL
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT**

June 28, 2005

DIVISION ONE

B176460 Malcolm G. Ellis (Not for Publication)
B178998 v.
 Paul Alexander Kingston et al.

The judgment is affirmed. Ellis is awarded his costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
 Mallano, J.

B173287 Bobbi Ann Lewis-Diblatzi (Not for Publication)
 v.
 City of Burbank

The judgment is affirmed. Diblatzi is awarded her costs of appeal.

Vogel (Miriam A.), J.

We concur: Spencer, P.J.
 Rothschild, J.

B176350 Robert Bisno (Certified for Publication)
 v.
 Santa Monica Rent Control Board

The judgment is affirmed. Plaintiff to recover his costs on appeal.

Spencer, P.J.

We concur: Mallano, J.
 Rothschild, J.

DIVISION ONE (Continued)

B168723 Frank Beardsley (Not for Publication)
 v.
 Transamerica Corporation et al.

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.
 Rothschild, J.

B171700 ABF Capital Corp. (Certified for Publication)
 v.
 Robert Berglass

We affirm the judgment of dismissal entered after the trial court sustained without leave to amend defendant's demurrer to plaintiff's complaint and the order denying defendant's request for attorney's fees.

Spencer, P.J.

We concur: Rothschild, J.
 Suzukawa, J. (Assigned)

B170163 Scottsdale Insurance Company (Certified for Publication)
 v.
 State Farm Mutual Automobile Insurance Company
 Commercial Underwriters Insurance Company

We reverse the judgment. We direct the trial court to vacate the order granting State Farm's and CUIIC's motions for summary adjudication and judgment and to reconsider the parties' summary judgment and adjudication motions in light of our holdings herein. Plaintiff is to recover its costs on appeal.

Spencer, P.J.

We concur: Mallano, J.
 Rothschild, J.

June 28, 2005 (Continued)

DIVISION ONE (Continued)

B175482 People (Not for Publication)
v.
Morales

The judgment is affirmed.

Spencer, P.J.

We concur: Mallano, J.
 Rothschild, J.

B169059 People (Not for Publication)
v.
Jackson

The judgment is affirmed.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

B175818 Esposito et al. (Not for Publication)
v.
County of Los Angeles

The judgment and order are affirmed.

Spencer, P.J.

I concur: Mallano, J.
I concur in the judgment only: Vogel (Miriam A.), J.

DIVISION ONE (Continued)

B173699 People (Not for Publication)
v.
Ware, Jr.

As the People properly concede, inasmuch as neither offense of which defendant was convicted qualifies as a serious or violent felony under subdivision (c) of Penal Code section 667.5, the court should have calculated defendant's presentence custody pursuant to Penal Code section 4019, rather than section 2933.1. (*People v. Thomas* (1999) 21 Cal.4th 1122, 1125.) The abstract of judgment therefore must be amended to reflect defendant's entitlement to a total of 579 days of presentence custody credits.

We modify the judgment to reflect that defendant earned 579 days of presentence custody credits. We affirm it as modified, and direct the Clerk of the Court to prepare an amended abstract of judgment and to forward it to the Department of Corrections.

Spencer, P.J.

We concur: Vogel (Miriam A.), J.
Mallano, J.

B175710 People (Not for Publication)
v.
Evans

The judgment is affirmed.

Spencer, P.J.

We concur: Mallano, J.
 Rothschild, J.

B174618 People
v.
Jeffrey Bryant

Filed order denying petition for rehearing.

June 28, 2005 (Continued)

DIVISION TWO

B174211 People
v.
Taylor

(Not for Publication)

The judgment is affirmed.

Nott, J. (Assigned)

We concur: Doi Todd, Acting P.J.
 Ashmann-Gerst, J.

B179721 Los Angeles County, D.C.S. (Not for Publication)
v.
Elliree B.

The order of dismissal is affirmed.

Nott, J. (Assigned)

We concur: Boren, P.J.
Ashmann-Gerst, J.

B174755 Daniel (Not for Publication)
v.
Daniel

The order is affirmed. Mother is entitled to costs on appeal.

Nott, J. (Assigned)

We concur: Doi Todd, Acting P.J.
Ashmann-Gerst, J.

DIVISION THREE

B174852 KWI 6380 Wilshire Blvd., L.P., etc. (Not for Publication)
v.
Law Offices of Robin Jacobs

The judgment is affirmed. Respondent(s) to recover costs.

Klein, P.J.

We concur: Kitching, J.
 Aldrich, J.

B177402 Michele Maurizio, et al. (Not for Publication)
v.
Book City News, Inc. et al.

The judgment is affirmed. No costs are awarded.

Klein, P.J.

We concur: Croskey, J.
 Aldrich, J.

B177174 People (Not for Publication)
v.
Fawaz Alashkar

The judgment is affirmed as modified. The trial court's order suspending defendant's driving privileges for five years is modified to six months. The clerk of the superior court shall forward an amended abstract of judgment to the Department of Corrections.

Aldrich, J.

We concur: Croskey, Acting P.J.
 Kitching, J.

DIVISION THREE (Continued)

B178475 Los Angeles County, D.C.S. (Not for Publication)
v.
Michelle M.,

The judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.
 Croskey, J.

B172931 Michael H. Bonaparte (Not for Publication)
v.
Alan R. Herson

The judgment is affirmed.

Aldrich, J.

We concur: Klein, P.J.
 Croskey, J.

B177078 People (Not for Publication)
v.
Lepe

The judgment is affirmed.

Kitching, J.

We concur: Klein, P.J.
 Aldrich, J.

June 28, 2005 (Continued)

DIVISION THREE (Continued)

B178110 People
v.
Bailey

(Not for Publication)

The judgment is affirmed.

Kitching, J.

We concur: Croskey, Acting P.J.
 Aldrich, J.

B177349 People (Not for Publication)
v.
Wood

The judgment is affirmed, except that Wood's sentence is vacated and the matter is remanded for resentencing consistent with this opinion. The trial court is directed to forward to the Department of Corrections an amended abstract of judgment.

Kitching, J.

We concur: Croskey, Acting P.J.
 Aldrich, J.

B175574 Jacob Shahmoon (Not for Publication)
v.
Nancy Thompson, et al.

The order granting Shahmoon's motion to enforce the 1994 judgment and denying the Thompsons' motion to set aside the 1994 judgment is reversed with directions to grant the Thompsons the relief requested. The matter is remanded for further proceedings consistent with this opinion. The Thompsons shall recover their costs on appeal.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

June 28, 2005 (Continued)

DIVISION THREE (Continued)

B156420 Renee Walker (Not for Publication)

v.

Los Angeles County Metropolitan Transportation Authority

The judgment is affirmed. Each party to bear their own costs.

Klein, P.J.

We concur: Croskey, J.
 Kitching, J.

B175330 Los Angeles County, D.C.S. (Not for Publication)

v.

Bonita J. and Keith G.

The judgment is affirmed.

Aldrich, J.

We concur: Croskey, Acting P.J.
 Kitching, J.

B171141 Swinerton Builders (Not for Publication)

v.

Pacific Design Center 1 LLC, et al.

The judgment is reversed with directions to the superior court to determine the amount of additional reimbursement for staffing expenses to award as damages and the reasonable value of additional management fee earned by Swinerton, and enter a new judgment awarding those amounts in addition to the amounts awarded in the original judgment. The order awarding attorney fees on appeal in an amount to be determined by the trial court on remand. Swinerton shall recover its costs on appeal.

Croskey, Acting P.J.

We concur: Kitching, J.
 Aldrich, J.

June 28, 2005 (Continued)

DIVISION THREE (Continued)

B177081 Vincent K. Evans (Not for Publication)
 v.
 Hamilton Way Trust, et al.

The judgment is affirmed. Respondent(s) to recover costs.

Croskey, J.

We concur: Klein, P.J.
 Kitching, J.

B172912 Eugene Sturman (Not for Publication)
 v.
 Patricia Koch-Oshita

The appeal is dismissed.

Croskey, Acting P.J.

We concur: Kitching, J.
 Aldrich, J.

DIVISION FIVE

Court reconvened at 9:00 a.m.

Present: Turner, P.J., Armstrong, J., Mosk, J. and Zaida G. Heraldez, Deputy Clerk.

Each of the following:

B175492 Darlene Firenza
B174938 People v. Erica Lu & Somsack Sisangkhomh
B172823 Mascola v. Bay Cities National Bank

Argument waived, cause submitted.

DIVISION FIVE (Continued)

B176463 People
 v.
 Brett Foster

Merits:
Argued by Leonard J. Klaif for appellant and by Michael C. Keller, Deputy Attorney General for respondent. Cause submitted.

B174252 First Federal Bank of California
 v.
 Paul F. Fegen

Merits:
Argued by Paul F. Fegen, appellant in propria persona and by Sharon M. Hotchkiss for respondent. Cause submitted.

Court recessed.

Court reconvened at 10:00 a.m.

Present: Turner, P.J., J., Mosk, J. Kriegler, J. and Zaida G. Heraldez, Deputy Clerk.

Each of the following:

B177365 People v. Armando Sossa
B178663 People v. Kevin Castillo

Argument waived, cause submitted.

B176856 People
 v.
 Eugene Johnson

Merits:
Argued by Walter L. Gordon III for appellant and by Daniel Chang for respondent. Cause submitted.

DIVISION FIVE (Continued)

B177555 Tanya Garcia
 v.
 Adriana's Insurance Services Inc. et al

Merits:

Argued by Irving Meyer for appellant and by Sidney W. Jones for respondent. Cause submitted.

B174746 Jennifer Ayre et al
 v.
 Santa Clarita Athletic Club

Merits:

Argued by William J. Kahn and Alisa E. Sandoval for appellants and by Thomas G. Oesterreich for respondent. Cause submitted.

Court recessed.

Court reconvened at 2:00 p.m.

Present: Armstrong, Acting P.J., Mosk, J., Kriegler, J. and Zaida G. Heraldez, Deputy Clerk.

Each of the following:

B177275 People v. James L. Carr
B177581 People v. Terry Owens
B180053 DCFS v. Richard H.

Argument waived, cause submitted.

B172740 Vaughn Bruenn
 v.
 Northrop-Grumman Corporation

Merits:

Argued by Robert L Risley for appellant and by Charles E. Barker for respondent. Cause submitted.

DIVISION FIVE (Continued)

B176278 Anthony Sneed
 v.
 International Rectifier Corp et al.

Merits:
Argued by Glenn W. Trost for appellants and by Robert J. Spitz for
respondent. Cause submitted.

Court adjourned.

B173281 Angelucci et al., (Certified for Publication)
 v.
 Century Supper Club

The judgment is affirmed.

Armstrong, J.

We concur: Turner, P.J.
 Mosk, J.

B178582 Occidental Petroleum (Not for Publication)
 v.
 Certain Underwriters at Lloyd's London

The order imposing \$15,000 in sanctions against defendant, Certain Underwriters at Lloyd's, London, and George J. Koelzer is affirmed. Defendant, National Union Fire Insurance Company of Pittsburgh, PA, is to recover its costs on appeal, jointly and severally, from Certain Underwriters at Lloyd's, London, and George J. Koelzer. Plaintiff, Occidental Petroleum Corporation, is to bear its own costs on appeal.

Turner, P.J.

We concur: Armstrong, J.
 Kriegler, J.

DIVISION SIX

B176040 People (Not for Publication)
v.
Avalos

We modify the judgment regarding the personal firearm use enhancement of section 12022.53, subdivision (b), to three years and four months for each of counts 4, 5, and 6. The trial court shall prepare an amended abstract of judgment and forward it to the Department of Corrections. The judgment is otherwise affirmed.

Gilbert, P.J.

We concur: Yegan, J.
Perren, J.

B177044 People (Not for Publication)
v.
Glove-Madden

The judgment (order denying motion to suppress evidence) is affirmed.

Yegan, J.

We concur: Gilbert, P.J.
Perren, J.

B178333 Streiter (Not for Publication)
v.
Streiter

The judgment is affirmed. Costs on appeal are awarded to Wife.

Gilbert, P.J.

We concur: Yegan, J.
Coffee, J.

June 28, 2005 (Continued)

DIVISION SIX (Continued)

B177101 Benson (Not for Publication)
v.
Benson

The post-judgment order is affirmed. Costs on appeal are awarded to husband.

Coffee, J.

We concur: Gilbert, P.J.
Yegan, J.

DIVISION SEVEN

B173506 Roos (Certified for Publication)
v.
Red

The judgment is affirmed. Respondent(s) to recover costs.

Woods, J.

We concur: Perluss, P.J.
Johnson, J.

B176829 Alebian (Not for Publication)
v.
Barnett

The order of the superior court is reversed and remanded for determination of fees. Respondents are to recover their costs on appeal.

Zelon, J.

We concur: Johnson, Acting P.J.
 Woods, J.

DIVISION SEVEN (Continued)

B173008 Lu (Certified for Publication)
v.
Grewal

The judgment is reversed and remanded to the trial court in light of our determination appellant was entitled to damages for unpaid rent (applying the fair market rental value standard for mitigation purposes) and for consequential damages. The post judgment order granting costs and legal fees to respondents is reversed. On remand the court is to determine who is the prevailing party. Appellant is awarded costs on appeal.

Zelon, J.

We concur: Perluss, P.J.
Johnson, J.

B170618 Sanai (Not for Publication)
v.
First Advantage Corp., et al.

The trial court's order denying Mr. Sanai's motion to set aside void judgment and orders, the final judgment entered in this action against Mr. Sanai and all postjudgment orders awarding and denying costs and attorney fees are reversed. The matter is remanded to the trial court with directions to vacate all orders entered after January 16, 2001 and to conduct further proceedings based on the state of the pleadings as of January 16, 2001. The trial court is further directed to consider Mr. Sanai's request for restitution and to order reimbursements to the extent appropriate. Finally, in the interests of justice, all further proceedings shall be heard before a trial judge other than the judge or judges whose orders are affected by this decision. Mr. Sanai is to recover his costs on appeal.

Perluss, P.J.

We concur: Woods, J.
Zelon, J.

June 28, 2005 (Continued)

DIVISION SEVEN (Continued)

B176906 People (Not for Publication)
v.
Harris

The order of the trial court denying the petition for writ of error coram nobis is reversed. The sentence in Case No. A917762 is vacated.

Zelon, J.

We concur: Perluss, P.J.
Johnson, J.

B172326 People (Not for Publication)
v.
Torres

The judgment is affirmed.

Zelon, J.

We concur: Johnson, Acting P.J.
Woods, J.

B174615 People (Not for Publication)
v.
Williams

The judgment is affirmed.

Johnson, Acting P.J.

We concur: Woods, J.
Zelon, J.

June 28, 2005 (Continued)

DIVISION EIGHT

B175942 People (Not for Publication)
v.
Michael Zelaya

The order is affirmed.

Flier, J.

We concur: Cooper, P.J.
Boland, J.

B173794 Paula A. Strabala (Not for Publication)
v.
Manuel Ramirez

The judgment is reversed and remanded to the trial court for further proceedings to determine the amount of the judgment and, following such a determination, for the entry of a judgment that is consistent with this opinion. The parties are to bear their own costs on appeal.

Flier, J.

We concur: Cooper, P.J.
Rubin, J.

B175811 Los Angeles County, D.C.S. (Not for Publication)
v.
Darenda H. et al.,

In re Moshana B., a Person coming Under the Juvenile Court Law.

The judgment is affirmed.

Flier, J.

We concur: Cooper, P.J.
Boland, J.

June 28, 2005 (Continued)

DIVISION EIGHT (Continued)

B175035 People

v.

Richard W.,

In re Richard W., a Person coming Under the Juvenile Court Law.

Filed order modifying opinion. Petition for rehearing is denied. (No change in the judgment)